IN THE

SUPREME COURT

OF THE

UNITED STATES.

H. L. Pinney et al.,
Plaintiffs in Error.

vs.

R. T. Nelson,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

The brief for plaintiffs in error does not present a statement of the case in conformity with Rule 21. It does not purport to set forth any of the facts showing "the manner in which the questions involved are raised." This court is thus asked to determine, as an abstract question of law, and without reference to any facts of time, place or parties, the power of the state of California to enact the last clause of section 322 of the Civil Code of that State. In other words, the question plaintiffs in error would have determined here is not as to the enforcement or operation of said statute—whether as to themselves it is constitutional, but as to the power of the State to enact the statute at all—whether it can, under any circumstances, be

constitutionally enforced against any person. But this broad question will not be considered or answered by this court, until plaintiffs in error show themselves in a position to raise it, and they can do this only by setting forth the facts, relating to themselves, and which show the statute to be in conflict with their constitutional rights.

> "*Prima facie*, and upon the face of the act itself, nothing will generally appear to show that the act is not valid, and it is only when some person attempts to resist its operation and calls in the aid of the judicial power to pronounce it void, as to him, his property or his rights, that the objection of unconstitutionality can be presented and sustained. Respect for the legislature, therefore, concurs with well established principles of law in the conclusion that such an act is not void, but voidable only; and it follows, as a necessary legal inference from this position, that this ground of avoidance can be taken advantage of by those only who have a right to question the validity of the act, and not by strangers."

Cited by *Cooley Con. Lim., 6th Ed. p. 197.*

We regret that the learned counsel for plaintiffs in error has not seen fit to particularize, either in his statement or his assignment of errors, the manner in which the constitutional rights of these particular stockholders in the foreign corporation in question have been violated by enforcing against them a statute which declares them to be liable for the payment of a small portion of the defendant in error's just claim against their *alter ego*—the "legal entity of the artificial being," endowed by the law of its organization with power to transact *their* business for them. Counsel's failure to do so, not only suggests the suspicion that his clients' "constitutional rights" are exhibited more propitiously in the abstract

than in the concrete, but also devolves upon us the necessity of setting forth a "concise abstract" of those facts which make up the case, including the material findings of the court below, and admissions of the pleadings, of which, under the state practice, findings were not necessary [*Gruhn v. Stanley, 92 Cal. 88*] and some matters also, of which the court below took judicial notice.

1. It appears that the statute in question, 322 of the Civil Code of California, was enacted March 17, 1876, and that the particular part attacked in this case as unconstitutional has never been construed in any manner by the Supreme Court of California.

2. That Article XII, Sec. 15 of the Constitution of California, adopted in 1879, is as follows:

> "No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State."

This section declares the public policy of the state of California toward foreign corporations [*Williams v. Gaylord, C. C. A., 102 Fed. Rep. 375*]. And, being adopted subsequently, it reinforces section 322 of the Civil Code.

3. Section 3 of Article XII of said constitution provides:

> "Each stockholder of a corporation, or joint stock association, shall be individually and personally liable for such portion of all its debts and liabilities," etc.
>
> And section 4 of the same Article defines corporation as used in the Article, and says it "shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations, not possessed by indi-

viduals or partnerships." This clearly included foreign corporations doing business in this State.

4. The Los Angeles Iron & Steel Co. was incorporated March 8, 1893, under the laws of Colorado, which laws do not provide for any individual liability of stockholders for corporate debts. [Tr. fols. 22 and 24.]

5. The 7th provision of its articles of incorporation is as follows:

> "The said company is created for the purpose of carrying on part of its business beyond the limits of the state of Colorado, and the principal office of said company in the state shall be kept at the city of Denver, Arapahoe county, and the principal plant and principal operations of said company, beyond the limits of the state, shall be in Los Angeles county, state of California, and such other places in the state of California as may be decided upon by the board of directors." *Tr. fol. 24.*

6. That the plaintiffs in error became stockholders in said corporation while they were residents and citizns of the state of California. And they continued to be such at all times mentioned. [*Tr. fols. 1 and 24.*]

7. That said corporation did business in the state of California, while plaintiffs in error were stockholders, and in so doing incurred indebtedness to defendant in error and his assignors, by contracts made, executed and to be performed, and which were performed on the part of defendant in error and his assignors, in the state of California. [*Tr. fol. 24.*]

8. Said indebtedness not having been paid, defendant in error brought suit September 30, 1898, against plaintiffs in error, among others, in the Justice's Court of Los Angeles city, California, upon their statutory liability as stockholders, and recovered judgment; whereupon, plaintiffs in error appealed to

the Superior Court of Los Angeles county, in said State, which, after due trial, on January 2, 1900, entered the judgment which is brought up in this record.

9. That said Superior Court is the highest State court from which a decision could be obtained in this case, and plaintiffs in error have brought said judgment up to the Supreme Court of the United States on writ of error to said Superior Court, and claim as the sole error that said Superior Court should have sustained the only defense they interposed to said suit, to wit, that the part section 322 of the Civil Code of California, upon which said judgment is based, is in conflict with certain provisions of the Constitution of the United States. [Tr. p. 1, c.]

ARGUMENT IN REPLY.

Counsel for plaintiffs in error insists that the provisions of the statute in question are inseparable and must be valid as to all stockholders in all foreign corporations doing business in the state of California, and that nothing in the facts of this case could affect the question. But as we understand it (without conceding at all any invalidity in the statute under any circumstances) the only question that can be raised here is whether or not the court below erred in deciding upon this record that this statute was not unconstitutional as to these plaintiffs in error in this case.

This court will always give a statute as much operation as possible. In *Chesapeake & O. Ry. Co. v. Ky.*, *179 U. S. R. 394*, where it was discussing the operation of the "separate coach" law for white and colored passengers as relating to the commerce clause of the Constitution, this court says: "If it were well settled that a separate coach law was unconstitutional, as applied to interstate commerce, the law applying on its face to *all* passengers should be

limited to such as the legislature were competent to deal with * * * and so construing it there can be no doubt as to its constitutionality."

> "A legislative act may be entirely valid as to some classes of cases, and clearly void as to others. * * * A law might be void as violating existing contracts, but valid as to all contracts which should be entered into subsequent to its passage, and which therefore would have no legal force except such as the law itself would allow. In any such case the unconstitutional law must operate as far as it can, and it will not be held invalid on the objection of a party whose interests are not affected by it in a manner which the constitution forbids."
>
> *Cooley Con. Lim., 6th Ed., pp. 213-4.*

It may not be improper here to notice that the State court of last resort has never had occasion to construe the provisions of the statute in question, and, so far as our researches have discovered, no other State has a similar provision, and no text-book writer has touched upon the precise question. It is, therefore, hardly proper in this case to presume or speculate as to what construction the State court would put upon the statute—whether it *would* construe it as applicable to *all* stockholders in *all* foreign corporations doing business in the state and for *all* liabilities of the corporation. It is sufficient to say here that it is obvious from the Kentucky case, and many others that might be cited, that this court will affirm the judgment unless it can clearly say the court below erred in applying the statute to these stockholders in this case. And that the statute can be construed as separable, if it should be necessary so to construe it, in order to give it constitutional operation, when the facts arise which require such a construction.

We think a *seriatim* examination of the assign-

ments of error will bring us directly to the logical conclusion upon the facts which must determine the decision of this court.

THE FIRST ASSIGNMENT OF ERROR.

The facts do not bring the statute in question, so far as the rights of plaintiffs in error are concerned, within the operation of the "obligations of contracts" clause of the Constitution. In the very nature of things no federal question is raised by the facts under the first general assignment of error.

> "Every charter of a corporation having a capital stock forms the basis of three distinct contracts. The charter is a contract between the state and the corporation; second, between the corporation and the stockholders; and third, between the stockholders and the state."
>
> *Cook S. & S., 3d Ed., Secs. 492-5 and 6.*

While counsel's brief is not specific in pointing out which of these contracts his clients have assumed obligations or acquired rights under, that are impaired by the statute, it is self-evident that the first assignment of errors must fail as to any one of them; for the statute had been unquestioned law in the state of California for at least fifteen years before any one of these charter contracts of the Los Angeles Iron & Steel Co. had any inception. It would seem to need no argument or authority to show that whatever objections *might* be urged, the objection that a statute impairs the obligations of their contract cannot be urged by persons either contracting within the jurisdiction of the statute, or voluntarily entering within the jurisdiction of the statute in the performance of their contract, or in the enjoyment of benefits of their contract, many years after the enactment of the statute.

We have been unable to find a single case decided

by this or any other court, where this clause of the Constitution has been invoked to annul a statute passed before the contract was *in esse* either as an executed or executory obligation, express or implied. The limitation can apply only to obligations of contracts existing at the time the law is enacted. It is an inhibition against laws retroacting upon past transactions in any manner that would impair vested rights. The conclusion reached by counsel *a priori* as to the necessary effect of the statute to impair obligations of contracts generally of all stockholders in all foreign corporations, must involve a *non sequitur* when applied to stockholders of a corporation not chartered or having any inception until long after the statute was enacted.

> "Obviously, this clause cannot be invoked for the reversal of the judgment below. It is equally clear that the law of the state to which the Constitution refers in that clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired. * * * It cannot, however, with propriety, be said that the obligation of a contract made with the state in 1874 was impaired by statutes enacted in 1867."
>
> *Lehigh W. Co. v. Easton*, 121 U. S. R. 391.

We submit that there is no direct showing, and no grounds for a clear inference, in this record, that the plaintiffs in error ever made any contract, the obligations of which would or could be impaired, within the meaning of the Constitution, by the enforcement of the statute before us, even waiving, for sake of argument only, the date of the enactment of the statute.

> "The obligation clause never has been understood to embrace other contracts than those which respect property, or some object of value,

and confer rights which may be asserted in courts of justice."

Dartmouth College v. Woodward, 4 Wheat. 629.

"For, at the threshold of all cases of this kind, this court must ascertain whether there is any such agreement on the part of the state as constitutes a contract, within the meaning of the Constitution of the United States."

Louisville Gas Co. v. Citizens Gas Co., 115 U. S. R. *692.*

It was stipulated [*Tr. fols. 19 and 22*] that there was no statute in Colorado providing that stockholders shall be liable for any portion of the indebtedness of the corporation; but there is not even an intimation in the record that there was any binding obligation of contract with the state of Colorado, or with any person, vesting in these plaintiffs in error the right to become, or to continue to be, owners of stock of the Los Angeles Iron & Steel Co., without ever becoming, or being made by statute, liable for any portion of the indebtedness of that corporation thereafter contracted. Suppose they were not liable at the time they became stockholders, *non constat* that they should never be made liable by statute for liabilities incurred by the corporation after the statute was passed. There is nothing to show that Colorado could not have enacted a statute making them liable thenceforth; and if Colorado was not bound with an inability to enact the law surely California was not.

We are mindful of the rule laid down in *Hanley v. Donoughue, 116 U. S. 1*, and know that this court does not take judicial notice of any of the laws of Colorado except those in evidence before the court below, and we ask counsel to keep within the same rule. His argument, based upon the proposition that

the laws of Colorado entered into and became a part of the charter contracts of this corporation, to have any force or application here, must assume without evidence upon which to base it, that some of the laws of that State created a binding obligation which these plaintiffs in error have a right to stand upon as against the operation of this statute of California. This court has often repeated what it says in *Munn v. Illinois*, *94 U. S. R. 123*, that, "Every statute is presumed to be constitutional." And by Marshall Ch. J. in *Fletcher v. Peck*, *6 Cranch 87*, *128*: "The question, whether a law be void for its repugnancy to the constitution, is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case." These are the presumptions which counsel must face here, and they cannot be overcome by inferences from other assumptions of fact. It devolved upon plaintiffs in error to show clearly and affirmatively that they contracted, when they became stockholders in this corporation, solely with reference to the laws of Colorado, and that such laws secured to them an exemption from ever being made liable for any indebtedness of the corporation. Having failed to show that they did so, no presumption will be indulged here that they did so. In fact, if any presumption should be indulged, it will be that arising from the historical fact in constitutional jurisprudence that nearly all, and perhaps all, the States now have the reserve power to amend, alter or change corporate charters, granted by themselves. If the Colorado constitution and laws reserved this power, at the time of the granting of the charter of this corporation, there was no contract that could be impaired by the enactment and enforcement of a statute declaring stockholders liable upon debts of the corporation thereafter contracted; and, on the other hand, if this

reserved power did not exist in the state of Colorado, it was incumbent on plaintiffs in error to prove it as part of their case.

THE SECOND ASSIGNMENT OF ERROR.

Counsel embraces three subdivisions in his second general assignment of errors, by quoting the words of Sec. 1 of Article XIV of the Constitution. But there seems to be no attempt to show that some of these provisions have any relevancy here. This is true of the first of the subdivisions, and in the absence of any discussion by counsel, it is only necessary to say that no "plain error" appears in the decision of the court below, in so far as that decision finds that this statute does not abridge any of the privileges or immunities which these plaintiffs in error are entitled to enjoy as citizens of the United States.

The second subdivision also is not particularly discussed, but on page 9 of the brief we find the only specification of the manner in which counsel claims the statute to offend against the declaration—sometimes referred to as "the last resort of a desperate cause"—that "no state shall deprive any person of life, liberty or property, without due process of law." There is and can be no suggestion that this statute deprives any person at all of life or liberty; but on the page of the brief mentioned we learn that it takes property without due process of law, "because it subjects the stockholder to liability upon a contract made without his consent, and without giving him an opportunity to be heard." Counsel does not undertake to say that such is the effect upon these plaintiffs in error, and until he has said so, and pointed out the manner of it, this question is not raised here. And a glance at the facts demonstrates with mathematical certainty that such is not the effect of the enforcement of the statute upon these plaintiffs in error.

They are declared to be liable for a portion of the indebtedness the Los Angeles Iron & Steel Co. incurred by contracts made with the defendant in error and his assignors. The construction given by the state court to the statute, as applied to domestic corporations, if applied here, would show that concomitantly with the creation of the liability of the corporation an independent, separate liability for a portion of the whole liability was created and became due from each stockholder. The same acts in making the contract created at the same time both liabilities, and the two rights of action accrued to defendants in error at the same time. [*Hyman v. Coleman*, 82 Cal. 650, and cases cited therein.] The State court has also construed the stockholders' liability, so far as domestic corporations are concerned—as counsel himself abundantly shows—to be contractual. Now, if plaintiffs in error are liable, "the same" as though the corporation were a domestic corporation, all these decisions must also contain the construction of the statute which upholds their liability. We stand squarely upon the whole of section 322 of the Civil Code and all the decisions of the Supreme Court of California applying it. And what are the facts showing that this liability was not imposed upon them without their consent, and how were they given the opportunity to be heard, just so much as, and in the same sense as stockholders in domestic corporations?

First: If the contract by which the corporation created a liability resting upon itself was *intra vires*, the liability devolving upon plaintiffs in error rests upon the broad ground of contract, just as fully as counsel shows to be the foundation of the "ordinary stockholder's liability." Plaintiffs in error subscribed to articles of incorporation, which declare the express purpose of the corporation to do business in California —waiving the very name chosen for the corporation

—its articles say, "the principal plant and principal operations * * * shall be in Los Angeles county, California." We need not enlarge upon the argument that when they subscribed to articles of incorporation containing that provision, or purchased stock issued thereunder—not to mention other matters evident in this record—it is clear that they expressly agreed that this corporation could and should do business in California; and, therefore, could and should make all *intra vires* contracts incident to the carrying on of that business. And surely if they agreed to the making of the contract in the State—even waiving the fact that they were citizens of the State—they must also be held to have agreed to all the personal liabilities which the expressed law of the State there declared to be inseparable incidents to the making of the contract. And, as stockholders in a corporation, these plaintiffs in error knew that the corporation was but a legal entity to represent themselves; that its board of directors was their expressly authorized agent to do the business and perform the acts as a result of which a liability was imposed upon them. In one sense of the term — and counsel evidently argues upon it in this sense—a stockholder may not consent to the making by the corporation of a particular contract. He may even do all in his power to prevent it, but if the corporation makes the contract, and it is not *ultra vires*, and the creditor dealing with the corporation under the contract parts with his property in good faith and afterwards seeks to recover in part by enforcing that stockholder's liability, his non-consent to that particular contract is no defense. In the very nature of corporate organization, stockholders are conclusively presumed to assent to all *intra vires* acts of the corporation. It must be so or there could be no safety in dealing with corporations. When a man

becomes a stockholder in a corporation he agrees as to all the world that he will accept any liabilities re-resulting from or growing out of the proper acts of the corporation that are declared by the law of the place where the corporation acts to be incident to his ownership of the stock. This agreement is more fundamentally a part of his contract than are the various provisions of the law of the State issuing the charter, which, it is conceded, do ordinarily enter into and become a part of his contract. But conceding this does not concede, what is necessary to counsel's point, that such laws *exclusively* constitute the charter contracts of stockholders. There are other elements entering into such contracts, and the consent to be bound by the regular acts of the controlling authority in the corporation is fundamental.

The stockholder has his opportunity to be heard in the regular way by which alone the individual can influence the actions of the corporation. These plaintiffs in error had those opportunities. and while nothing appears in the record intimating any want of their consent to the making of the contract by which this corporation became indebted to defendant in error, it is apparent that had they expressed dissent the contract would nevertheless have been made legally with their consent. They gave their consent, irrevocable so long as they owned their stock, when they accepted the charter. And all the rights which they now claim to be obligations inseparably connected with the corporate charter by virtue of the laws of the State granting it, were expressly declared in the charter itself to be dependent on a continuing use of corporate functions under the protection of the same body of laws which contains the provisions imposing the burden of a liability upon them. Surely an expressed consent to the operation of one legal authority is superior to what may be termed an infer-

ential or implied consent to some other. At any rate, they have manifested their consent to the operation of the statute under such circumstances that every element of an estoppel is available against them in favor of this defendant in error, who gave credit to the corporation, in good faith, relying upon the assumption that this corporation and all its stockholders were consenting to the full force of the laws of this State.

Second. It affirmatively appears that in this case it was not *ultra vires* for this corporation to do business in California, but counsel contends that the statute is unconstitutional because if applied to enforce a liability in a foreign corporation not organized to do business in California, as against a stockholder who did not consent to its doing business here, it would be making such stockholder liable in a manner to which he had never given any consent, direct or implied. A sufficient reply to this suggestion is that the facts here do not bring such a case before the court; and, moreover, the stockholder in such a case has his defense under this very statute, and in a proper case the courts of the State would say that the *ultra vires* acts of the corporation created no liability against the stockholder who had not assented thereto. But if the stockholder had manifested his consent, or if there were matters of estoppel against him, he would then have no constitutional right to object. The statute in no manner abridges the stockholder's right to make any defense he may have before the liability can be enforced against him. Of course, the law is made for the normal acts of the corporation, and the power of the State to enact the law can not be measured by the possible effects of its application in some abnormal case involving questions of *ultra vires*. These may well be left to the courts till they arise, when they can and will be decided in the light

of the particular facts. The stockholder ordinarily has a remedy for the *ultra vires* acts of the corporation.

This term "due process of law" has received frequent construction and application by this court, and it is not necessary to concede that in a clear case this court will not hesitate to annul a statute or to set aside an act done under judicial or executive authority, which infringes in any particular upon this constitutional limitation, but in *Davidson v. New Orleans, 96 U. S. 104*, it is suggested that it is probably better "to leave the meaning to be evolved by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasonings on which such decisions may be founded." Many cases have been decided since this principle was announced, but counsel does not find one that fits the facts here; and we submit that he has not made it apparent how this case comes within the general lines of the reasoning of any of the decided cases. We have looked at Webster's famous definition of the term, and we cannot see how this statute is opposed to any element of "the general law." While it is certainly clear that any tribunal in which the liability under the statute is to be investigated, shall "hear before it condemns," and shall "proceed upon inquiry," and shall "render judgment only after trial." Plaintiffs in error have no constitutional right to require more.

The third subdivision of the second assignment of errors also counsel abandons, and we only stop to remark that well he may. For no argument is necessary to show that this statute was intended to secure, and that it is most efficacious in securing to all persons within the jurisdiction of California the "equal protection of her laws." A mere statement of the law,

together with this constitutional provision, is to show no conflict can exist between them.

THIRD ASSIGNMENT OF ERROR.

The third general assignment of error is but a restatement of the first two, and needs no separate consideration.

THE STATUTE IS CONSTITUTIONAL.

We have thus far examined the statute specifically in the light of the several assignments of error, and in closing we desire to set forth some of the grounds upon which, we think, the statute can rest as being strictly within the just range of legislative discretion.

The statute sets forth a condition under which foreign corporations can do business here. The public policy of the State, as expressed in its Constitution, publishes the condition. Counsel ostensibly admitting the power of the State to impose conditions upon foreign corporations doing business within its borders, yet in fact denies that power, except as to conditions precedent imposed directly upon the corporation itself. But this restriction of the power cannot be sustained by any of the host of decisions of this court discussing the power.

"A foreign corporation can claim a right to do business in another state to any extent, only subject to the conditions imposed by its laws.

> As said in *Paul v. Virginia, 8 Wall. 168, 181:* 'The recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states—a comity which is never extended where the existence of the corporation, or the exercise of its powers, is prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other states, but depending for such recognition, and the enforcement of its contracts upon their assent, it follows, as a

> matter of course, that such assent may be granted upon such terms and conditions as those states may deem proper to impose.'

This doctrine has been so frequently declared by this court that it must be deemed no longer a matter of discussion, if any question can ever be considered at rest.

Only two exceptions, or qualifications, have been attached to it in all the numerous adjudications in which the subject has been considered, since the judgment of this court was announced more than half a century ago in *Bank of Augusta v. Earle, 13 Pet. 519.* One of these qualifications is that the state cannot exclude from its limits a corporation engaged in interstate or foreign commerce, established by the decision in *Pensacola T. Co. v. W. U. Tel. Co., 96 U. S. 1, 12.* The other limitation on the power of the state is where the corporation is in the employ of the general government, an obvious exception, first stated, we think, by the late Mr. Justice Bradley, in *Stockton v. Baltimore & N. Y. R. Co., 32 Fed. R. 9, 14.* * * * No individual member of the corporation, or the corporation itself, can call in question the validity of any exaction which the state may require for the grant of its privileges. It does not lie in any foreign corporation to complain that it is subjected to the same law with the domestic corporation."

> *Horn Silver Mining Co. v. State of N. Y., 143 U. S. 314-5.*

It should be noticed that the court in the above case was not discussing a license for permission to do business in the state, but a tax levied upon the entire capital stock of a foreign corporation doing business in the state, and it is said the tax imposed and under discussion was "one of the conditions under which the foreign corporation was allowed to do business there."

The same principle is laid down in the broadest terms by most eminent text writers.

Cook on Stock and Stockholders, section 694, says: "A state legislature may exclude foreign corporations from doing business within its borders, or impose such terms, conditions and restrictions as it may see fit."

"*Morawetz*, at Sec. 973, says: "The limits of the constitutional powers of a state over a corporation formed in another state, can best be determined by regarding the corporation in its true light, as an association of individuals, rather than as a fictitious person or entity. * * * Most of the constitutional limitations upon the powers of the states are imposed for the benefit of all persons throughout the United States, irrespective of citizenship. The shareholders of the corporation are, therefore, entitled to the benefit of these provisions, without regard to their citizenship or the jurisdiction in which their association was formed."

In Paul v. Virginia, *8 Wall. 181*, this court directly declares that the State "may exact such security for the performance of its (the foreign corporation's) contracts with their citizens as in their judgment will best promote public interest. The whole matter rests on their discretion."

If the States can exact property security from the foreign corporation, by parity of reasoning, the conclusion is inevitable that they have the power to exact other security in the shape of the obligations of the stockholders. And if the State have the power to exact penalty from the agent of the foreign corporation, under a penal statute intended only, of course, for the monied protection of the creditors or of the people, why, then, can it not, by parity of reasoning,

provide that the stockholders of the foreign corporation shall be liable in the monied way?

It is also said in *Paul v. Virginia*, p. 181, "That special privileges which are conferred must be enjoyed at home, unless the assent of other states to their enjoyment therein be given; and that a grant of corporate existence was a grant of special privileges to the corporators, enabling them to act for certain specified purposes as a single individual, and exempting them, unless otherwise provided, from individual liability, which could therefore be enjoyed in other states only with their assent."

In the case of *People v. Fire Association of Philadelphia, 92 N. Y. 311*, the court said the State "meets the applicant on the border forbidding admission, as it has a right to do, except on the condition that it will fulfill all requirements of our statutes relating to foreign corporations, one of which is the very law here assailed. When the corporation comes in, it agrees to the conditions. They become binding by its assent. * * * We may exclude absolutely, and in that power is involved the right to admit upon such conditions as we please. * * * Must comity become magnanimity or injustice, if we owe courtesy to sister states, do we not owe protection to our own corporations, formed and fostered under our law? Is it vicious to insist for them upon precise equality of treatment? These questions our legislature answered. The inquiry was within the just range of their discretion."

In *Hooper v. California*, 155 *U. S.* 656, it is said: "The power to exclude embraces the power to regulate, to enact and enforce all legis-

lation in regard to things done within the territory of the state, which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious to the fullest extent."

These decisions leave but the one question, and that only partially open, to wit: Do the provisions of the statute before us constitute a "condition" in the sense in which that term is used in said decisions, operating upon foreign corporations doing business in this State. As we have said, there being no such enactment by any other state, as the statute in question, we could scarcely hope to find an adjudication, which in terms adopts the phraseology of the California law and says the state has the power to enact and enforce it; but we think the language of the foregoing decisions is in such clear and broad terms that no doubt can be entertained of the application of those adjudications, and the principles announced therein to the facts involved in this controversy.

Cases have arisen (among them we find two cited and quoted from by counsel), in which it was sought to enforce a liability upon stockholders in foreign corporations analogous to the liability imposed by this statute, but where there existed no such statute upon which to rest the liability. It is needless to notice, as counsel has himself shown, that the courts denied the existence of any such liability. But in each case the decision rests upon the absence of such a statute as we have here.

In *Merrick v. Van Santvoord, 34 N. Y. 208*, page 14 of plaintiffs' brief, we find the following expressions used by the court: "No statute of that state, or of this, has been violated either by him or by the corporation." * * * "Even if the charter had been silent, he would not have been liable for the debts of the com-

pany, either there or here, UNLESS BY FORCE OF SOME STATUTE depriving him of his exemption." Also in *Bank v. Hall, 35 Ohio 166*, page 20 of the brief, is found the following: "How this fact, if true, IN THE ABSENCE OF STATUTORY REGULATION, operates to make defendants liable on a promise they never made, either expressly or impliedly, it is difficult to understand."

And in the same opinion we find the following, although a dictum, containing a clear expression of the mind of the Ohio tribunal upon the question involved, and being the only direct statement of the principle contended for herein which we have been able to find in any opinion or text book:

> "It is not doubted that a state may forbid a foreign corporation from exercising corporate power within its limits, or may lay such restrictions upon their exercise as will prevent it, EXCEPT ON CONDITION THAT THE STOCKHOLDERS BECOME BOUND FOR THE DEBTS OF THE CORPORATION."

We submit that the statute is not only entirely without the constitutional limitations specified, but that it is a just and proper exercise of legislative discretion; that no association of persons desiring to do business in California as a foreign corporation should have any objection to doing it under the conditions the statute imposes; and that no stockholders in a foreign corporation organized to do business in California ought to be heard to complain of the burden of a condition which they accepted in order to enjoy the advantage of reaping possible benefit. Therefore the judgment should be affirmed.

W. S. TAYLOR, and
EDWARD W. FORGY,
Attorneys for Defendant in Error.

J. A. ANDERSON,
Of Counsel.